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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,651	03/30/2001	Scott J. Tuman	54407USA6B.006	9447
32692 7590 01/18/2007 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EXAMINER TSOY, ELENA	
			ART UNIT	PAPER NUMBER
			1762	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/822,651

Applicant(s)

TUMAN ET AL.

Examiner

Elena Tsoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 71-79,81-83,85-90 and 92-111 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 71-79,81-83,85-90 and 92-111 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

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Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 18, 2006 has been entered.

Response to Amendment

Amendment filed on December 18, 2006 has been entered. Claim 84 has been cancelled. New claims 109-111 have been added. Claims 71-79, 81-83, 85-90, and 92-111 are pending in the application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Rejection of claims 71-79, 81-84, 86-90, 92-106, and 108 under 35 U.S.C. 102(b) as being anticipated by Wessels et al (US 5,669,120) has been withdrawn.

4. Claims 71, 73-79, 81-82, 85, 94-95, 97-109, and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al (US 5,669,120).

Wessels et al are applied here for the same reasons as set forth in paragraph 8 of the Office Action mailed on 8/23/2006. Wessels et al disclose a fastener comprising a *composite* substrate comprising a resin film layer 4a (**claimed non-woven web**) with embedded therein a pile core sheet S (4a-S), a plurality of discrete polymeric regions 4b fused to the first major side of the substrate 4a-S only (See Figs. 4B, 4D, 4F). It is held that determination of patentability is based on the product itself. It is also held that patentability of a product is independent of how it is made. Therefore, it is irrelevant whether a plurality of discrete polymeric regions fused to a first major side of a web is formed by fusing polymeric regions to the first major side of the web or by embedding or encapsulating as long as the resulting web comprises a plurality of discrete polymeric regions fused to a first major side of a web.

Wessels et al further teach that since the pile core sheet S is manufactured by weaving or knitting, it is possible to change the design of the pile core sheet in arrangement and orientation of piles and to determine the size, shape or arrangement of hook elements optionally. It is accordingly possible to cope instantly with various requirements for the surface fastener in which hook and loop elements coexist. See column 10, lines 54-60. However, Wessels et al do not expressly teach claimed arrangement of hook elements wherein each discrete polymeric region

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comprises a discrete patch having a perimeter that is entirely bordered by the first major surface side of the elastic side (Claims 71, 83, 94, 109, 111).

It is well settled that changes in shape is an obvious matter of design choice depending on particular use of a final product. Therefore, it would have been an obvious matter of design choice to make discrete regions in Wessels et al of any desirable pattern of the web (including those of claimed invention) depending on the particular application of end product in the absence of a showing of criticality.

As to claims 85, 107, Wessels et al teach that the individual hook elements 4b are oriented in a common direction in the same row and are oriented in opposite direction in adjacent rows or *adjacent hook elements 4b in the same row may be oriented alternately in opposite directions*. With this arrangement, a surface fastener, which does not have direction in engaging force, can be obtained. See column 10, lines 24-37.

5. Claims 72, 83, 85-90, 92-93, 96, and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Allen et al (US 5,547,531).

Wessels et al are applied here for the same reasons as above. Wessels et al fail to teach that the web construction comprises non-woven elastic material.

Allen et al teach that a composite female component of the fastening device for the use in diapers (See column 4, lines 6-7) comprising a non-woven fibrous web joined to an elastic backing provides a low cost loop fastening material instead of conventional knit or woven fabric (See Figs. 1, 4; column 1, lines 68; column 2, lines 1-24; column 3, lines 6-12; column 5, lines 46-57).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed a web of Wessels et al using a composite female component comprising a non-woven fibrous web joined to an elastic backing with the expectation of providing the desired low cost, as taught by Allen et al.

6. Claims 85, 107 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Murasaki (US 5,643,651) for the reasons of record set forth in paragraph 9 of the Office Action mailed on 4/13/2006.

Response to Arguments

7. Applicants' arguments filed December 18, 2006 have been fully considered but they are not persuasive for the reasons discussed above.

Applicants argue that claims are not anticipated by Wessels et al, because in contrast to claimed invention, a resin, which forms hook elements, *encapsulates* the substrate as shown in Figs. 4A-4F instead of being fused *to* a first major side of the web.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Thursday, 9:00AM - 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-142323. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elena Tsoy
Primary Examiner
Art Unit 1762

ELENA TSOY
PRIMARY EXAMINER



January 11, 2007